

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.160 OF 2003

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Arun R. Gandhi & Ors. ...Petitioners

v/s.

Yogendra N. Thakkar & Ors. ...Respondents

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Mr.Piritosh Jariwala i/b Kanga & co. for the
Petitioners.

None for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 19TH JANUARY, 2005

P.C.:

1. By this petition the Petitioners challenge the award dated 19th December, 2002 made by the sole-arbitrator.

2. The facts necessary for deciding this petition are that the Petitioners who are five in numbers and the Respondents who are four in numbers, are the chartered accountants and carrying on profession in the firm by name M/s.N.M. Raiji & Co. as partners. There is an arbitration clause in the partnership deed, i.e. clause No.18. That clause reads as under:-

Clause 18: "All disputes and questions in connection with the Partnership or this deed arising between Partners or their representatives shall be referred to Mr.Arun Jaswantlal of Matubhai Jamietram, Attorneys, as sole Arbitrator, and in case he is not available or declines to act or resigns, then to a single Arbitrator, if

the partners agree upon one, otherwise to the Arbitrators to be appointed by each party to the difference in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof."

According to averments in the petition the differences arose between the parties in relation to alleged misconduct of the Petitioners Nos. 2 and 3. The Respondent No.1/ Mr.Yogendra N. Thakkar invoked the arbitration clause in the month of September, 2001. In terms of the clause 18, quoted above, all the partners who are nine in numbers appointed nine arbitrators and thus arbitral tribunal was constituted. It is alleged in the petition that two of the nine arbitrators appointed subsequently resigned and those vacancies are not yet filled in. In this situation it appears that the Respondent No.1 addressed a letter dated 7-2-2002 to eight partners of the firm stating therein as the differences have arisen between the parties in respect of appointment of co-ordinator to co-ordinate the proceedings before the arbitral

tribunal, he proposes Mr.K.A.Shetti as a common arbitrator. This letter was replied to by the Petitioner stating therein that there cannot be a separate arbitration for differences arising out of proceedings of an already existing arbitration. The question as to who should be co-ordinate has to be decided by the arbitral tribunal in relation to which the co-ordinator is appointed. It was also stated that appointment of Mr.Shetti as a common arbitrator is not in accordance with the arbitration clause and therefore the Respondent may file an application under Section 11 for appointment of the arbitrator. It appears that despite this objection Mr.Gautam Ashra took up the arbitral proceedings and made his final award dated 19-12-2002 appointing one Mr.A.R. Gandhi, who is Petitioner No.1 as co.ordinator. It is this award which is challenged in the petition.

3. It is submitted by the Petitioners that firstly the appointment of Mr.Bupendra Shah and thereafter appointment of Mr.Gautam Ashra as sole-arbitrator is contrary to the arbitration clause and the Act. It is further submitted that the co-ordinator was to be appointed to co-ordinate the arbitration proceedings

before the existing arbitral tribunal and therefore such appointment could have been made by only arbitral tribunal in terms of the provisions of Section 6 of the Arbitration Act.

4. None of the Respondents, though served, appeared. I have perused the record. It is clear from the existing arbitration clause that the appointment of sole arbitrator is not in accordance with the arbitration clause. Secondly, it is clear from Section 6 that if any administrative assistance in the form of appointment of co-ordinator is necessary then that power vests in the existing arbitral tribunal to make the appointment by consent of all the parties. For that purpose it may not be possible to appoint another arbitral tribunal. In any case even if such arbitral tribunal can be appointed, it will have to be constituted in accordance with the existing arbitration clause and the provisions of the Act. As the appointment of Mr. Gautam Ashra as the sole arbitrator is neither in accordance with Act nor in accordance with the arbitration clause, the award made by him is liable to be set aside. It is accordingly so ordered. Petition disposed of.

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